

REMARKS

Claims 1-20 are of record pending in this application. Applicant thus retains here the original set of claims with the original numbering. Applicant has provided claims 7-11 and 19 with the proper status identifier as requested by the Examiner in the Notice of Non-Compliant Amendment dated June 12, 2008.

All claims were subject to restriction/election requirements. No claims are hereby amended, nor newly added nor cancelled in/by this paper.

Reconsideration of all outstanding restrictions and election requirements for all such claims remain here in issue. Claims 1-20, and examination and allowance of all claims 1-20 are hereby respectfully requested. The issues of the outstanding Office Action, mailed January 11, 2008 (hereafter, "the Election/Restriction"), will now be addressed *seriatim*.

The Restrictions/Election Requirements

Applicant hereby provides the following remarks on the restriction/election requirements of the inventions of Group I, II and III (Election/Restriction of 01/11/2008), and Applicant respectfully requests reconsideration and withdrawal thereof.

First, Applicant elects with traverse, Group I, which encompasses claims 2-4, 7-16, and 19, drawn to a method of producing a low molecular weight organic aglycon compound in yeast.

Next, as to the traverse, Applicant notes that the Examiner has not provided a *prima facie* case of distinctness of species running afoul of MPEP 816 ("[a] mere statement of conclusion is inadequate"). The Examiner has indeed given no reasons for distinctness of any of the species in this case which is improper as Applicant then has no means for arguing the impropriety thereof. See e.g., MPEP 808.01(a) Species;

Even if the examiner rejects the generic claims, and even if the applicant cancels the same and admits that the genus is unpatentable, where there is a relationship disclosed between species, such disclosed relation must be discussed and reasons

advanced leading to the conclusion that the disclosed relation does not prevent restriction, in order to establish the propriety of restriction. (Emphasis added.)

There is not enough factual development in the election requirement to determine whether there is any distinctness between species; rather there exists only speculation and/or unsupported conclusion. This is why the MPEP explains that “[a] mere statement of conclusion is inadequate.” MPEP 816 (and see MPEP 808 where reason is distinguished from a mere statement of conclusion). Thus, what is argued here is that the Examiner’s burden has not been met by his mere conclusory statements without reasonable factual development of distinctiveness within the scope and interpretation of the claims. The Examiner’s burden not being met, then the restriction/election requirement fails.

Applicant therefore respectfully requests reconsideration and withdrawal of all species election requirements and consequently examination and allowance of all claims pending in this application; namely claims 1-20.

CONCLUSION

Applicant respectfully requests that all of the claims be examined. A timely Notice of Allowance is requested to be issued in this case. Applicants believe no fees or petitions are due with this filing. However, should any such fees or petitions be required, please consider this a request therefore and authorization to charge Deposit Account No. 02-2093 as necessary.

Serial No. 10/561,823
Atty. Dckt. No. 14455.880US01

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Respectfully submitted,

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